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MAR - 9 1992

Federal Communications Commission  
Office of the Secretary

MM Docket No. 92-3  
RM-7874

**To: Chief, Allocations Branch  
Mass Media Bureau**

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since 1981. KIJK-FM has been adequately serving the local needs of the Prineville community for over ten years and, as will be shown below, the community is too small to warrant the allocation of another station.

**Prineville Cannot Economically Sustain  
the Proposed Channel Allotment**

Second, Prineville cannot economically sustain the operation of another local station. Highlakes presents a classic example of the problems facing many FM station operators today. Since 1981, Highlakes has operated Stations KRCO(AM) and KIJK-FM in Prineville, a small community composed of only approximately 5,355 people.<sup>1/</sup> Although KRCO-AM and KIJK-FM are the only two radio broadcast stations actually licensed to Prineville, Prineville is also served by approximately 13 other area signals, as well as 5 signals from Portland, Oregon which is approximately 110 miles away. A community of the size of Prineville can barely provide an economic base to support all of these existing stations, and an additional FM facility.

However, under the Commission's current allocation policy, the economic viability of the Prineville market is not taken into consideration in the allocation process. The only relevant element is whether the channel will "technically" fit into the proposed area based on the Commission's minimum distance separation requirements. According to the Notice, Channel 284A

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<sup>1/</sup> 1990 census data determined from counsel's telephone conversation with the Population Information Staff of the U.S. Census Bureau, U.S. Dept. of Commerce.

can be allotted to Prineville, with a site restriction of 12.3 kilometers southeast, in compliance with the Commission's spacing requirements.

This liberal allotment "by demand" policy, combined with other Commission policies that favor FM "drop-ins," up-grades" and "move-ins,"<sup>2/</sup> have resulted in a dramatic increase in the number of FM stations over the last thirty years. For example, in 1960 there were 912 authorized FM stations. This number almost tripled to 2181 in 1969 and today the number of licensed commercial FM stations has increased to 4570. See FCC 35th Annual Report/Fiscal Year 1969, at 128; and FCC News Release, "Broadcast Station Totals as of December 31, 1991." However, this explosion in the number of FM stations has distorted the Commission's objective of increasing audio programming diversity. Instead, the Commission's policies have resulted in the oversaturation of the FM market to the extent that existing FM radio stations are experiencing severe adverse economic consequences.

In response to this problematic situation, the National Association of Broadcasters ("NAB") recently filed a Petition for Rule Making ("Petition") seeking a review of the Commission's FM

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<sup>2/</sup> E.g. Modification of FM and TV Authorizations to Specify New Community of License, 5 FCC Rcd 7094 (1990); FM Allocation Rules, 62 RR 2d 17 (1987); FM Station Upgrade on Existing or Adjacent Channels, 60 RR 2d 114 (1986); Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignment, 55 RR 2d 903 (1984); Suburban Community Policy, 53 RR 2d 681 (1983).

allocations and licensing policy, as well as a Request for Temporary Suspension of New Commercial FM Station Allotment and Application Processing ("Request"). The Petition presents compelling evidence of the bleak situation facing many FM stations:

In even the smallest counties in the country, listeners have many choices available to them--and they use these radio choices. Counties with a population of less than 1,000 people 12 and older may have difficulty economically supporting radio stations, so the intuitive assumption is that residents of these counties have few radio choices. Yet even these counties average more than ten different radio stations. These figures also point up the kind of intense competition faced by small market radio operators. While these stations may have no local competitor, they face an intense battle for listeners with stations from other markets that are available to local listeners.

Petition at Appendix A, 4-5.

The NAB's report on the financial picture for FM stations is equally disturbing:

Since the mid 1980's the increase in competition both from within and outside the radio industry has left many FM stations finding themselves in precarious financial positions. Even before the recent downturn in the economy many FM stations were losing substantial amounts of money. For 1990, the most recent data available, the average FM standalone station lost \$14,908. Half of all FM standalone lost more than \$15,715, with one-quarter of these stations losing more than \$154,210.

Petition at Appendix B.

As the NAB's Petition makes clear, the time has come for the Commission to revise its policies and rules underlying the allotment process for FM stations, as it recently did in the AM broadcast service. See Report and Order in MM Docket No. 87-267, 6 FCC Rcd. 6273 (1991). Specifically, the Commission cannot

continue to ignore that economic factors, in addition to technical factors, must be taken into account in deciding whether to allot a new facility to a community. Such a revision is necessary to ensure that FM stations, such as KRCO and KIJK, can continue to survive and provide quality service to their respective communities.

Moreover, the Commission cannot simply rely on its existing policies regarding FM allocations without justifying its continued adherence to such policies. As the D.C. Court of Appeals recently held, changes in factual and legal circumstances may require the Commission to reconsider a settled policy or explain its failure to do so. Bechtel v. FCC, No. 91-1112, slip op. at 15 (D.C. Cir. January 31, 1992), citing Geller v. FCC, 610 F.2d 973 (D.C. Cir. 1979). This obligation to reexamine its policies is a basic principle of administrative law that the Commission cannot ignore:

When the agency applies [a general] policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy.

Pacific Gas & Elec. v. FPC, 506 F.2d 33 (D.C. Cir. 1974).

Although the Commission does have wide latitude to make policy decisions based on its expertise, it also has a corresponding duty to evaluate its policies over time to make certain that they are actually fulfilling the Commission's predicted goals. See FCC v. National Citizens Comm. for

Broadcasting, 436 U.S. 775 (1978). The last time the Commission evaluated its FM rules was in 1982, when it eliminated all non-technical criteria for making new FM allotments. FM Assignment Policies and Procedures, 51 RR 2d 807 (1982). The Commission justified these changes by stating that "the old policies have served their purpose but now must be replaced by new standards which are appropriate to the current environment." Id. at 818. The same is true again today.

The evidence is overwhelming that a change in FM allocations procedure is needed. Consequently, instead of waiting for a formal rule making to change these policies, the Commission should decide, in this case, that the public interest would not be served by allotting another channel to the already overcrowded market in Prineville, Oregon. In the alternative, however, Highlakes urges at the very least that the Commission hold in abeyance any action on the allotment of Channel 284A until it acts on the NAB's proposal and makes a complete reassessment of its policy. As argued in the NAB's request, it is of equal importance to the Commission's FM policy review that any action on all new FM allocations and applications be withheld pending the outcome of the review of the NAB proposal.

WHEREFORE, for the foregoing reasons, Highlakes submits that the proposed channel allotment to Prineville, Oregon is contrary to the public interest and should be denied.

Respectfully submitted,



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March 9, 1992

CERTIFICATE OF SERVICE

I, Alethea R. Wilson, hereby certify that on this 9th day of March, 1992, a copy of the foregoing Comments of Highlakes Broadcasting Company was mailed first class, postage prepaid, to the following:

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